

STATE OF MICHIGAN
COURT OF APPEALS

LAKE FOREST PARTNERS 2, INC.,

Petitioner-Appellant,

v

DEPARTMENT OF TREASURY,

Respondent-Appellee.

FOR PUBLICATION

June 6, 2006

9:05 a.m.

No. 257417

Tax Tribunal

LC No. 00-292089

Official Reported Version

Before: Wilder, P.J., and Zahra and Davis, JJ.

ZAHRA, J.

Petitioner appeals as of right the judgment of Tax Tribunal affirming respondent's assessment under the State Real Estate Transfer Tax Act (SRETTA), MCL 207.521 *et seq.* This case addresses the propriety of assessments under the SRETTA for purchase agreements that include both the sale of unimproved property and an executory contract to build a home on that property. We conclude that the value of the property for purposes of assessment of the state real estate transfer tax is determined at the time the parties execute the purchase agreement. We reverse and remand.

A. Facts and Proceedings

This case involves 45 transactions in which petitioner agreed to sell buyers certain unimproved lots and subsequently build homes on those lots. In each transaction, a single document entitled "purchase agreement" provided the terms of the sale of the unimproved lot and the terms of the agreement to build a home on that lot. The parties stipulated that the purchase agreement separately stated the consideration for the lot and the consideration to build the home. The purchase agreement also provided that after petitioner completed construction of the home and a certificate of occupancy was issued, petitioner would deliver a warranty deed to the buyer.

When the deed was recorded, petitioner paid real estate transfer taxes based on the value of the lot as it existed when the purchase agreement was executed.¹

In May 2002, respondent Department of Treasury determined that, under the SRETTA, petitioner failed to pay the appropriate transfer taxes in each of the 45 transactions. Respondent concluded that petitioner should have paid transfer taxes based on the value of the lot and the home. Respondent ordered petitioner to satisfy a tax deficiency of \$65,968, plus a penalty (\$16,492) and interest. Petitioner filed its petition with the Tax Tribunal for reconsideration of respondent's assessment, which the Tax Tribunal denied.

B. Standard of Review

This Court reviews decisions of the Tax Tribunal only to determine whether the tribunal committed an error of law or applied the wrong legal principles. Const 1963, art 6, § 28; *AERC of Michigan, LLC v City of Grand Rapids*, 266 Mich App 717, 722; 702 NW2d 692 (2005), citing *Schultz v Denton Twp*, 252 Mich App 528, 529; 652 NW2d 692 (2002). Also, this Court reviews the interpretation of statutes, which is a question of law, de novo. *AERC of Michigan, supra* at 722, citing *Florida Leasco, LLC v Dep't of Treasury*, 250 Mich App 506, 507; 655 NW2d 302 (2002).

C. Analysis

MCL 207.523 provides:

(1) There is imposed, in addition to all other taxes, a tax upon the following written instruments executed within this state when the instrument is recorded:

(a) Contracts for the sale or exchange of property or any interest in the property or any combination of sales or exchanges or any assignment or transfer of property or any interest in the property.

(b) Deeds or instruments of conveyance of property or any interest in property, for consideration.

¹ The same 45 transactions were initially the subject of a circuit court case, *Washtenaw Co v Lake Forest Partners 2, Inc*, LC No. 00-579-CH. In that case, the county argued that, under the real estate transfer tax act (RETTA), MCL 207.501 *et seq.*, which essentially mirrors the SRETTA, petitioner should have paid the county on the basis of the value of the lot and the home. The case was resolved by a consent order, under which the parties agreed that as long as petitioner used separate contracts in these types of transactions, i.e., one for the sale of the lot and one for the construction of the home, the RETTA tax would be assessed only on the basis of the value of the lot.

(2) The person who is the seller or grantor of the property is liable for the tax imposed under this act.

The state real estate transfer tax is "levied at the rate of \$3.75 for each \$500.00 or fraction of \$500.00 of the total value of the property being transferred." MCL 207.525. "'Value' means the current or fair market worth in terms of legal monetary exchange *at the time of the transfer*." MCL 207.522(e) (emphasis added). While the transfer tax is paid "when the instrument is recorded," MCL 207.523(1), the transfer tax is assessed on "the current or fair market worth . . . at the time of the transfer," MCL 207.522(e).

""[O]ur primary task in construing a statute, is to discern and give effect to the intent of the Legislature."" *Neal v Wilkes*, 470 Mich 661, 665; 685 NW2d 648 (2004), quoting *Sun Valley Foods Co v Ward*, 460 Mich 230, 236; 596 NW2d 119 (1999). "The words of a statute provide "the most reliable evidence of its intent"" *Neal, supra* at 665, quoting *Sun Valley, supra* at 236, in turn quoting *United States v Turkette*, 452 US 576, 593; 101 S Ct 2524; 69 L Ed 2d 246 (1981). "Unless defined in the statute, every word or phrase of a statute will be ascribed its plain and ordinary meaning." *Robertson v DaimlerChrysler Corp*, 465 Mich 732, 748; 641 NW2d 567 (2002). "[C]ourts must give effect to every word, phrase, and clause in a statute and avoid an interpretation that would render any part of the statute surplusage or nugatory." *Jenkins v Patel*, 471 Mich 158, 167; 684 NW2d 346 (2004) (citation omitted). "[P]rovisions not included by the Legislature should not be included by the courts." *Polkton Charter Twp v Pellegrom*, 265 Mich App 88, 103; 693 NW2d 170 (2005) (citation omitted).

Each of the 45 transactions involved the execution of two written instruments: a purchase agreement and a deed. Of those two instruments, only the deed was recorded, and, thus, only the deed was taxed. MCL 207.523(1). Although the purchase agreements were not recorded, they are nonetheless "[c]ontracts for the sale or exchange of property" under MCL 207.523(1)(a). Because the transfer tax may be imposed on purchase agreements, we conclude that upon the execution of a purchase agreement, some interest in the property is transferred under the SRETTA. Respondent's contention that interest in the property is transferred only by execution of the deed ignores the language of MCL 207.523(1)(a). The transfer tax is assessed on "the current or fair market worth . . . at the time of the transfer." MCL 207.522(e). We therefore conclude that the transfer tax is assessed on the basis of the value of the property when the purchase agreement is executed.²

² We note that, under MCL 207.526, the purchase agreements may arguably be classified as "written instruments and transfers of property" that are exempt from the tax. Specifically, the purchase agreements may be characterized as "land contract[s] in which the legal title does not pass to the grantee until the total consideration specified in the contract has been paid," MCL 207.526(o). However, as mentioned, the purchase agreements in this case were not recorded, and thus whether they are exempt under MCL 207.526 is purely academic. In any event, we disagree with the suggestion that the land-contract exemption delays the assessment of taxes (continued...)

Further, it is well-settled that the execution of a purchase agreement transfers an interest in property. See *Graves v American Acceptance Mortgage Corp (On Rehearing)*, 469 Mich 608, 614; 677 NW2d 829 (2004); *Stevens v DeBar*, 229 Mich 251, 253; 200 NW 978 (1924); *Zurcher v Herveat*, 238 Mich App 267, 291; 605 NW2d 329 (1999); *Pittsfield Charter Twp v City of Saline*, 103 Mich App 99, 103; 302 NW2d 608 (1981). And although the purchase agreements transfer only an equitable interest in the property, under the SRETTA, the transfer of "any interest in the property" will suffice. MCL 207.523(1)(a) (emphasis added). As a practical matter, "[a] trial court should enforce the equities of the parties in such a manner as to put them as nearly as possible in the position that they would have occupied had the conveyance of the real property occurred when required by the contract." *Godwin v Lindbert*, 101 Mich App 754, 758; 300 NW2d 514 (1980). In other words, "[l]and, traditionally presumed to have a peculiar value, is subject to specific performance." *Kent v Bell*, 374 Mich 646, 651; 132 NW2d 601 (1965). Here, each purchase agreement indicated a specific lot number that identified the real estate purchased. "Conceivably, [the land] could not be duplicated by an award of money." *Id.* Thus, execution of the purchase agreement transfers to the buyer an equitable interest in the property, which gives rise to a cause of action for possession of the property. Therefore, we conclude that the value of the property for purposes of assessment is determined at the time the parties execute the purchase agreement.

We reverse and remand for further proceedings. We do not retain jurisdiction.

Wilder, P.J., concurred.

/s/ Brian K. Zahra
/s/ Kurtis T. Wilder

(...continued)

rather than the date on which the transfer tax is paid. We conclude that the land-contract exemption delays the date on which the transfer tax is paid, and merely allows buyers to record land contracts without immediately paying the tax, thus protecting the buyers' rights under the land contract until a deed is executed.